

JAMES A. DiBOISE, State Bar No. 83296  
jdiboise@wsgr.com  
BRIAN G. MENDONCA, State Bar No. 209728  
bmendonca@wsgr.com  
WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation  
One Market, Spear Tower, Suite 3300  
San Francisco, CA 94105  
Telephone: (415) 947-2000  
Facsimile: (415) 947-2099

Attorneys for Plaintiff  
ACTUATE CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ACTUATE CORPORATION, a Delaware  
corporation,

Plaintiff,

v.

WASHINGTON MUTUAL BANK, a  
Washington corporation,

Defendant.

CASE NO.: CV 08-2918 SI

**PLAINTIFF ACTUATE  
CORPORATION'S MOTION TO  
PERMIT WITHDRAWAL AND  
SUBSTITUTION OF COUNSEL AND  
[PROPOSED] ORDER GRANTING  
MOTION FOR WITHDRAWAL AND  
SUBSTITUTION OF COUNSEL**

1 Pursuant to Civil Local Rules 7-11 and 11-5, Plaintiff Actuate Corporation ("Actuate")  
2 hereby moves the Court for an order permitting the withdrawal of its counsel of record, James A.  
3 DiBoise and Brian G. Mendonca of Wilson Sonsini Goodrich & Rosati ("WSGR") and the  
4 appearance of substitute counsel, Daniel J. Bergeson and Donald P. Gagliardi of Bergeson, LLP  
5 ("Bergeson"), on its behalf in this action. Actuate respectfully submits that said substitution of  
6 counsel is in the interests of justice.

7 Actuate, WSGR and Bergeson consent to such withdrawal and substitution of counsel.

8 Accordingly, Actuate respectfully requests that the Court enter an Order reflecting this  
9 change, and that all necessary changes be made to the Court's records and ECF, and that all  
10 future communications regarding this case be directed to the following:

11 DANIEL J. BERGESON, State Bar No. 105439  
12 dbergeson@be-law.com  
13 DONALD P. GAGLIARDI, State Bar No. 138979  
14 dgagliardi@be-law.com  
15 Bergeson, LLP  
16 303 Almaden Blvd.  
Suite 500  
San Jose, CA 95110  
Phone: (408) 291-6200  
Fax: (408) 297-6000

17 Defendant's counsel Scott Stilman was informed of the proposed substitution by e-mail  
18 on July 16, 2008.

19 This motion is not made for purposes of delay or any other improper purpose.

20 WHEREFORE, Actuate respectfully requests that this Court enter its Order permitting  
21 withdrawal and substitution of counsel for Actuate, and update the Court's records and ECF  
22 system for this case by removing as counsel of record James DiBoise and Brian Mendonca of  
23 Wilson Sonsini Goodrich & Rosati and substituting in their place Daniel Bergeson and Donald  
24 Gagliardi of Bergeson, LLP as counsel of record for Actuate.

1 Dated: July 16, 2008

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation  
JAMES A. DiBOISE, State Bar No. 83296  
BRIAN G. MENDONCA, State Bar No. 209728

4 By: /s/\_\_\_\_\_  
Brian G. Mendonca  
bmendonca@wsgr.com

6 Dated: July 16, 2008

ACTUATE CORPORATION

8 By: /s/\_\_\_\_\_  
Thomas McKeever

10 Dated: July 16, 2008

BERGESON, LLP  
DANIEL J. BERGESON, State Bar No. 105439  
DONALD P. GAGLIARI, State Bar No. 138979

13 By: /s/\_\_\_\_\_  
Daniel J. Bergeson  
dbergeson@be-law.com

1 I, Brian G. Mendonca, am the ECF User whose identification and password are being used  
2 to file **PLAINTIFF ACTUATE CORPORATION'S MOTION FOR SUBSTITUTION OF**  
3 **COUNSEL AND [PROPOSED] ORDER GRANTING MOTION FOR SUBSTITUTION OF**  
4 **COUNSEL.** In compliance with General Order 45.X.B, I hereby attest that Thomas McKeever  
5 and Daniel Bergeson have concurred in this filing.

6 Dated July 16, 2008

7 WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

8 By: Brian G. Mendonca  
9 Brian G. Mendonca

**[PROPOSED] ORDER**

Having reviewed and considered Plaintiff Actuate Corporation's Motion for An Order Permitting Withdrawal and Substitution of Counsel, and good cause appearing, the Court hereby orders that James DiBoise and Brian Mendonca of Wilson Sonsini Goodrich & Rosati ("WSGR") be permitted to withdraw as counsel of record for Actuate Corporation and Daniel Bergeson and Donald Gagliardi of Bergeson, LLP ("Bergeson") may appear as substitute counsel of record for Actuate Corporation. The Court's ECF system shall be updated to reflect these changes.

DATED: \_\_\_\_\_, 2008

\_\_\_\_\_  
Honorable Susan Illston  
United States District Judge  
Northern District of California

**CERTIFICATE OF SERVICE**

I, Shirley R. Frazier, declare:

I am employed in San Francisco County, State of California. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, One Market, Spear Tower, Suite 3300, San Francisco, California 94105.

On this date, I served:

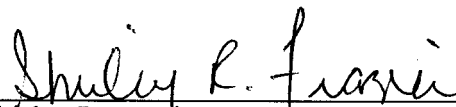
1. **PLAINTIFF ACTUATE CORPORATION'S MOTION TO PERMIT WITHDRAWAL AND SUBSTITUTION OF COUNSEL AND [PROPOSED] ORDER GRANTING MOTION FOR WITHDRAWAL AND SUBSTITUTION OF COUNSEL**

☒ By placing the document(s) in a sealed envelope for collection and mailing with the United States Postal Service on this date to the following person(s):

Scott J. Stilman  
Assistant General Counsel  
First Vice President  
Washington Mutual Bank  
Legal Dept. (N110701)  
9200 Oakdale Avenue  
Chatsworth, CA 91311

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of documents for delivery according to instructions indicated above. In the ordinary course of business, documents would be handled accordingly.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on July 16, 2008.

  
Shirley R. Frazier